



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Fred C. Branson
Banking Commissioner
Austin, Texas

Dear Sir:

Opinion No. O-1841
Re: R. C. S., Article 3921 --
Bank charters and amend-
ments -- Fees.

We beg to acknowledge receipt of your letter of January 11, 1940, requesting an opinion from this department in reply to your questions as follows:

"1. Under the provisions of Article 3921 of the Revised Statutes of Texas, what fees should the Commissioner collect upon the filing of an amendment which does not increase the capital stock of the corporation?

"2. Under the provisions of Article 3921, what fees should the Commissioner collect upon the filing of an amendment which does increase the capital stock?"

The statute cited by you reads as follows:

"The Banking Commissioner shall charge and receive for the use of the State the following fees:
For making an investigation of an application for the organization of a State Bank, not to exceed \$50.00

"For each charter, amendment or supplement thereto, of a bank or bank and trust company, a fee of fifty dollars shall be paid when said charter is filed, and if the authorized capital stock of such corporation exceeds

ten thousand dollars, it shall be required to pay an additional fee of ten dollars for each additional ten thousand dollars of its authorized capital stock or fractional part thereof after the first, provided such fee shall not exceed twenty-five hundred dollars."

The precise question presented by you had not been decided but a very similar fee statute has been construed by the Supreme Court, and the holding in that case is determinative of the question presented by you.

In *St. Louis S. W. Ry. Co. of Texas, v. Tod*, Secretary of State, 64 S. W. 778, Chief Justice Gaines construed Article 2439 of the statute which provided:

"The secretary of state, besides other fees that may be prescribed by law, is authorized and required to charge for the use of the state the following fees:

For each and every charter, amendment or supplement thereto of a private corporation created for the purpose of operating or constructing a railroad, magnetic telegraph line, or street railway, or express company, authorized or required by law to be recorded in said department, a fee of one hundred dollars, to be paid when said charter is filed; provided, that if the authorized capital stock of said corporation shall exceed one hundred thousand dollars, it shall be required to pay an additional fee of twenty-five dollars for each one hundred thousand dollars authorized capital stock or fractional part thereof, after the first."

The Chief Justice mentioned the possible construction of the Article but concluded as follows:

"We conclude that the only reasonable construction of the statute in question is that when an amendment to a charter is filed, if there be an increase of the capital stock by an amount over \$100,000, then the additional fee is chargeable upon the excess of such increase over the amount named, but that, if the amendment does not authorize an in-

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crease of stock, then the fixed fee of \$100 only should be charged for its filing."

Applying the decision to your case, it would follow, that in all cases of amendments of a bank's charter, which does not involve an increase of the capital stock the fixed fee of \$50.00 should be charged and collected. If, however, the amendment involves an increase of the capital stock, then in addition to the fixed fee of \$50.00 there should be charged and collected a further fee for the increase, upon the basis of \$10.00 for each additional \$10,000.00 or fractional part thereof of such increase.

You will accept this opinion in lieu of the one sent you earlier in the week, which is hereby withdrawn.

Very truly yours

ATTORNEY GENERAL OF TEXAS

(Signed)

By

Ocie Speer
Assistant

OS-MR

Approved Jan. 30, 1940

(Signed) Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED:
Opinion Committee
By B. W. B.
Chairman